

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

Case Nos. 1:18-CR-176
1:12-CR-17

BABUBHAI BHURABHAI RATHOD,

Defendant

/

**MEMORANDUM IN SUPPORT OF MOTION TO ADJOURN
SENTENCING AND FINAL REVOCATION HEARING**

The defendant entered a plea to one count of health care fraud and one count of aggravated identity theft. In return, the government, among other things, agreed not to pursue a number of other charges against the defendant and to not charge his wife.

Undersigned counsel advised the defendant to accept the plea offer and, after many hours of consultation, the defendant agreed to do so.

The defendant is also charged with violating supervised release. Those charges are based on much of the same conduct charged in the criminal indictment. A hearing was held and probable cause was found by the Magistrate Judge.

A sentencing hearing and a final revocation hearing are now set for December 17, 2018.

On November 25 and November 27, 2018, the defendant informed undersigned counsel that he wished to discharge counsel and to obtain a new lawyer. He has also advised undersigned counsel that he wished to withdraw his plea and to contest the charges against him.

Undersigned counsel has met with the defendant on numerous occasions at the jail, and those meetings have averaged at least 3 hours in length. Undersigned counsel

has advised the defendant about the risks of a Motion to Withdraw Plea and about the fact that a plea withdrawal is not automatic. Rather, it is within the discretion of the Court. The defendant has been advised that a plea can only be withdrawn based on a fair and just reason. *E.g., United States v. Martin*, 668 F.3d 787, 794 (6th Cir. 2012); *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1992).

Undersigned counsel has also advised the defendant that he would cooperate fully with any successor counsel. As of the date of this Motion, no attorney has contacted undersigned counsel.

Undersigned counsel has continued his representation of the defendant, including preparing objections to the pre-sentence report and participating in an objection meeting on November 27, 2018. Undersigned counsel understands that he has responsibility unless and until the Court grants a substitution. Undersigned counsel is fulfilling those responsibilities to the best of his ability.

The defendant has informed counsel that he needs at least two weeks to identify and retain a successor counsel. If such an attorney is retained and is allowed to substitute, that attorney will need time to get up to speed and to make decisions about whether a plea withdrawal motion should be filed.

The defense is respectfully asking this Court to grant an adjournment. There is a definite conflict between the defendant and undersigned counsel because defendant has taken the position that he was misadvised because he believes he has a defense to the charges which the government has brought against him. Undersigned counsel has advised the defendant about the evidence the government has against him and the elements of the offenses with which he is charged or could be charged. Despite that advice and despite

being given numerous hours to discuss and ask questions, the defendant is persisting in his position. This has created a conflict and has led to the defendant notifying undersigned counsel that he is discharged.

For all of these reasons, the defense is respectfully asking this Court to adjourn the sentencing hearing and the final revocation hearing to allow the defendant time to secure a successor counsel and for that attorney to take appropriate steps on behalf of the defendant.

Undersigned counsel will continue to represent the defendant and to act in the defendant's best interests until this Court grants a substitution.

A hearing may be appropriate so that the defendant can express his views on the record to the Court.

Respectfully submitted

Grand Rapids, MI
November 28, 2018

/s/ David A. Dodge
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